

Pension Benefit Guaranty Corporation

§ 4007.10

when due if paid no later than 30 days after the date of such bills. Otherwise, interest will accrue in accordance with paragraph (a) of this section on the amount of the bill from the date of the bill until the date of payment.

§ 4007.8 Late payment penalty charges.

(a) *Penalty charge.* If any premium payment due under this part is not paid by the due date prescribed for such payment by § 4007.11, the PBGC will, unless a waiver is granted pursuant to paragraph (b) of this section, assess a late payment charge (not to exceed 100% of the unpaid premium) equal to the greater of—

(i) 5% per month (or fraction thereof) of the unpaid premiums; or

(ii) \$25.

(b) *Waiver of penalty charge.* The late payment penalty charge will be waived, in whole or in part—

(1) With respect to any premium payment made within 60 days after the due date prescribed for such payment in § 4007.11, if, before such due date, the PBGC grants a waiver upon a showing of substantial hardship arising from the timely payment of the premium and a showing that the premium will be paid within such 60-day period;

(2) If the PBGC grants a waiver based on any other demonstration of good cause;

(3) If the PBGC, on its own motion, waives the application of paragraph (a) of this section;

(4) With respect to any premium payment (excluding any variable-rate premium under § 4006.3(b)), if a plan that is required to make a reconciliation filing described in § 4007.11(b)(2)(iii)—

(i) Paid at least 90 percent of the flat-rate premium due for the premium payment year by the due date specified in § 4007.11(b)(2)(i); or

(ii) Paid by the due date specified in § 4007.11(b)(2)(i) an amount equal to the premium that would be due for the premium payment year, computed using the flat per capita premium rate for the premium payment year and the participant count upon which the prior year's premium was based; and

(iii) Pays 100 percent of the flat-rate premium due for the premium payment year under § 4006.3 on or before the due

date for the reconciliation filing under § 4007.11(b)(2)(iii); or

(5) With respect to any PBGC bills for the premium payment necessary to reconcile the premium paid with the actual premium due, if such bills are paid no later than 30 days after the date of such bills.

§ 4007.9 Coverage for guaranteed basic benefits.

(a) The failure by a plan administrator to pay the premiums due under this part will not result in that plan's loss of coverage for basic benefits guaranteed under section 4022(a) or 4022A(a) of ERISA.

(b) The payment of the premiums imposed by this part will not result in coverage for basic benefits guaranteed under section 4022(a) or 4022A(a) of ERISA for plans not covered under title IV of ERISA.

§ 4007.10 Recordkeeping; audits; disclosure of information.

(a) *Retention of records to support premium payments.* All plan records, including calculations and other data prepared by an enrolled actuary or, for a plan described in section 412(i) of the Code, by the insurer from which the insurance contracts are purchased, that are necessary to support or to validate premium payments under this part shall be retained by the plan administrator for a period of six years after the premium due date. Records that must be retained pursuant to this paragraph include, but are not limited to, records that establish the number of plan participants and that reconcile the calculation of the plan's unfunded vested benefits with the actuarial valuation upon which the calculation was based.

(b) *PBGC audit.* Premium payments under this part are subject to audit by the PBGC. If, upon audit, the PBGC determines that a premium due under this part was underpaid, the late payment interest charges under § 4007.7 and the late payment penalty charges under § 4007.8 shall apply to the unpaid balance from the premium due date to the date of payment. In determining the premium due, if, in the judgment of the PBGC, the plan's records fail to establish the number of plan participants with respect to whom premiums were

required for any premium payment year, the PBGC may rely on data it obtains from other sources (including the IRS and the Department of Labor) for presumptively establishing the number of plan participants for premium computation purposes.

(c) *Providing record information.* (1) *In general.* The plan administrator shall make the records retained pursuant to paragraph (a) of this section available to the PBGC upon request for inspection and photocopying at the location where they are kept (or another, mutually agreeable, location) and shall submit information in such records to the PBGC within 45 days of the date of the PBGC's written request therefor, or by a different time specified therein.

(2) *Extension.* Except as provided in paragraph (c)(3) of this section, the plan administrator may automatically extend the period described in paragraph (c)(1) by submitting a certification to the PBGC prior to the expiration of that time period. The certification shall—

(i) Specify a date to which the time period described in paragraph (c)(1) is extended that is no more than 90 days from the date of the PBGC's written request for information; and

(ii) Contain a statement, certified to by the plan administrator under penalty of perjury (18 U.S.C. §1001), that, despite reasonable efforts, the additional time is necessary to comply with the PBGC's request.

(3) *Shortening of time period.* The PBGC may in its discretion shorten the time period described in paragraph (c)(1) or (c)(2) of this section where it determines that collection of unpaid premiums (or any associated interest or penalties) would otherwise be jeopardized. If the PBGC shortens the time period described in paragraph (c)(1), no extension is available under paragraph (c)(2).

(d) *Address and timeliness.* Information required to be submitted under paragraph (c) of this section shall be submitted to the address specified in the PBGC's request. The timeliness of a submission shall be determined in accordance with §§ 4007.5 and 4007.6.

[61 FR 34020, July 1, 1996, as amended at 62 FR 36663, July 9, 1997]

§ 4007.11 Due dates.

(a) *In general.* The premium filing due date for small plans is prescribed in paragraph (a)(1) of this section and the premium filing due dates for large plans are prescribed in paragraph (a)(2) of this section.

(1) *Plans with fewer than 500 participants.* If the plan has fewer than 500 participants, as determined under paragraph (b) of this section, the due date is the fifteenth day of the eighth full calendar month following the month in which the plan year began.

(2) *Plans with 500 or more participants.* If the plan has 500 or more participants, as determined under paragraph (b) of this section—

(i) The due date for the flat-rate premium required by § 4006.3(a) is the last day of the second full calendar month following the close of the plan year preceding the premium payment year; and

(ii) The due date for the variable-rate premium required by § 4006.3(b) for single-employer plans is the fifteenth day of the eighth full calendar month following the month in which the premium payment year begins.

(iii) If the number of plan participants on the last day of the plan year preceding the premium payment year is not known by the date specified in paragraph (a)(2)(i) of this section, a reconciliation filing (on the form prescribed by this part) and any required premium payment or request for refund shall be made by the date specified in paragraph (a)(2)(ii) of this section.

(3) *Plans that change plan years.* For any plan that changes its plan year, the premium form or forms and payment or payments for the short plan year shall be filed by the applicable due date or dates specified in paragraphs (a)(1), (a)(2), or (c) of this section. For the plan year that follows a short plan year, the due date or dates for the premium forms and payments shall be, with respect to each such due date, the later of—

(i) The applicable due date or dates specified in paragraph (a)(1) or (a)(2) of this section; or

(ii) 30 days after the date on which the amendment changing the plan year was adopted.